

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SCHA BUCK LARSON,
CDCR #AH-6147,

Plaintiff,

vs.

RICHARD BAILIFF; ANDRES RUIZ;
RICHARD WIDNER; JHON CURRAN;
JHON CUMMINGS,

Defendants.

Civil 13cv2790 H (KSC)
No.

**ORDER REGARDING CASE
STATUS AND DIRECTING
CLERK TO RE-ISSUE SUMMONS
AND IFP PACKAGE**

Scha Buck Larson is currently incarcerated at the California Institution for Men in Chino, California. (Doc. No. 6.) Mr. Larson is proceeding pro se and has filed a civil rights complaint pursuant to 42 U.S.C. § 1983. (Doc. No. 1.) Mr. Larson alleges violations of his constitutional rights during his arrest by San Diego police officers in November 2011. (*Id.* at 1-2.)

On December 12, 2013, the Court granted Mr. Larson leave to proceed *in forma pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). (Doc. No. 4 at 2.) Finding his Complaint sufficient to survive the initial screening provisions of 28 U.S.C. § 1915(e)(2) and § 1915A, the Court directed the Clerk to issue a summons upon

1 Defendants and ordered the U.S. Marshal to effect service of Mr. Larson's Complaint
 2 pursuant to FED.R.CIV.P. 4(c)(2) and 28 U.S.C. § 1915(d). (Id. at 2-4.)

3 On the same day, the Clerk issued the summons on Mr. Larson's Complaint,
 4 prepared an "IFP package," including certified copies of Mr. Larson's Complaint, a
 5 U.S. Marshal Form 285 ("USM Form 285") for each Defendant named in the
 6 Complaint, and a copy of the Court's Order granting Mr. Larson leave to proceed IFP,
 7 and mailed them to Mr. Larson for completion. (Doc. No. 5.)

8 On December 26, 2013, Mr. Larson filed a Notice of Change of Address,
 9 indicating he had been transferred from Kern Valley State Prison to Richard J.
 10 Donovan State Prison (Doc. No. 6). Mr. Larson's change of address did not indicate
 11 the date of his transfer, but it stated that Mr. Larson had not received summons forms.
 12 On January 17, 2014, Mr. Larson filed another letter stating that he had not received
 13 summons forms. (Doc. No. 7.)

14 Based on these filings, the Court concludes that the IFP package mailed to Mr.
 15 Larson on December 12, 2013 never reached him.

16 I.

17 FED.R.CIV.P. 4 Service Rules

18 Rule 4 of the Federal Rules of Civil Procedure provides that "if a defendant is
 19 not served within 120 days after the complaint is filed, the court—on motion or on its
 20 own after notice to the plaintiff—must dismiss the action without prejudice against that
 21 defendant or order that service be made within a specific time." FED.R.CIV.P. 4(m).

22 In cases like this one, involving a plaintiff who has been granted leave to
 23 proceed IFP pursuant to 28 U.S.C. § 1915(a)(1), a United States Marshal, upon order
 24 of the court, serves the summons and the complaint. FED.R.CIV.P. 4(c)(3); 28 U.S.C.
 25 § 1915(d) (in IFP proceedings, "[t]he officers of the court shall issue and serve all
 26 process, and perform all duties in such cases."). "[A]n incarcerated pro se plaintiff
 27 proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
 28 summons and complaint.'" *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994)

(quoting *Puett*, 912 F.2d at 275), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

Thus, in the interests of justice and in order to facilitate the completion of U.S. Marshal service in this matter, the Court finds good cause to re-issue the materials necessary to serve Defendants. *See In re Sheehan*, 253 F.3d 507, 513 (9th Cir. 2001).

II.

Conclusion and Order

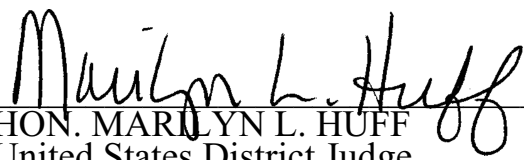
Accordingly, the Court hereby:

1) **DIRECTS** the Clerk to provide Mr. Larson with an additional “IFP Package” consisting of: (a) this Order; (b) the Court’s December 12, 2013 Order Granting IFP and Directing U.S. Marshal Service [Doc. No. 4]; (c) certified copies of Mr. Larson’s Complaint [Doc. No. 1]; (d) an alias summons as to Mr. Larson’s Complaint [Doc. No. 5]; and (e) five blank USM Form 285s for purposes of re-attempting service as to each Defendant.

2) **IT IS FURTHER ORDERED** that pursuant to FED.R.CIV.P. 4(c)(3), (m) and 28 U.S.C. § 1915(d), the U.S. Marshal shall, *within 30 days of receiving Mr. Larson’s USM Form 285s*, effect service of Mr. Larson’s Complaint and summons upon Defendants as directed by Mr. Larson. All costs of service shall be advanced by the United States pursuant to the Court’s December 12, 2013 Order granting Mr. Larson leave to proceed IFP and directing service pursuant to 28 U.S.C. § 1915(d) and FED.R.CIV.P. 4(c)(3). (Doc. No. 4.)

IT IS SO ORDERED.

DATED: January 27, 2014


HON. MARILYN L. HUFF
United States District Judge